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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re E.I., a Minor.

A.S.,

Petitioner and Respondent,

v.

S.I.,

Objector and Appellant.

A156245

(Napa County
Super. Ct. No. 16FL000677)

After a contested, one-and-a-half day hearing, the trial court granted a petition by a nine-year-old child's mother to terminate the parental rights of the child's biological father, in order to free her for adoption by the mother's husband. The grounds, although not pertinent here, were based on the father's extensive criminal history that rendered him unfit as a parent as well as abandonment of his daughter.

The biological father, S.I., now appeals the resulting judgment terminating his parental rights. The sole issue he raises is a contention the trial court erred by failing to inquire whether his daughter has any Indian ancestry before terminating his rights, which he says is required by the Indian Child and Welfare Act (ICWA) and related state law provisions effectuating it, and he asks for a limited remand to correct the asserted error. We affirm.

Federal law does not impose any duty to inquire about a child's Indian heritage if there is no evidence before the court that a child does, or might, have Indian ancestry. Rather, notice of a child custody proceeding is required under the ICWA only if the court

“ ‘ “knows or has reason to know that an Indian child is involved.” ’ ” (See *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1385–1386 (*Noreen G.*), italics omitted; 25 U.S.C. § 1912(a).) Father does not argue the court knew or had reason to know his daughter has Indian ancestry, nor does he even argue there is evidence in this record of possible Indian ancestry. So he has not established any violation of federal law.

Under state law, by contrast, the court does have a duty to inquire about a child’s possible Indian ancestry. As father argues, that duty arises under California Rules of Court, rule 5.481, which imposes “an affirmative and continuing duty to inquire whether a child is or may be an Indian child.” (Cal. Rules of Court, rule 5.481(a).) Nevertheless, assuming without deciding the trial court failed here to discharge its duty of inquiry, there is nothing in the record indicating that appellant’s daughter does in fact have Indian ancestry, nor does father assert that she does. In these circumstances we will not reverse. Apart from one outlying decision that has been criticized (*In re J.N.* (2006) 138 Cal.App.4th 450, 461 (*J.N.*); but see *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431 (*Rebecca R.*) [disagreeing with *J.N.*]; *In re N.E.* (2008) 160 Cal.App.4th 766, 770 [following *Rebecca R.* rather than *J.N.*]), the cases uniformly hold that violation of the court’s state-law duty of inquiry imposed by the Rules of Court is harmless if there is no indication, either in the record or in an offer of proof made by a parent on appeal, that the child has Indian ancestry. (See *In re H.B.* (2008) 161 Cal.App.4th 115, 121–122; *In re N.E.*, at p. 769; *Rebecca R.*, at p. 1431; see also *Noreen G.*, *supra*, 181 Cal.App.4th at pp. 1387–1388.) None of the authorities cited by appellant are to the contrary.

As was said by another appellate court considering precisely the same argument: “Father complains that he was not asked below whether the child had any Indian heritage. Fair enough. But, there can be no prejudice unless, *if* he had been asked, father *would have* indicated that the child did (or may) have such ancestry.

“Father is here, now, before this court. There is nothing whatever which prevented him, in his briefing or otherwise, from removing any doubt or speculation. He should have made an offer of proof or other affirmative representation that, had he been asked,

he would have been able to proffer some Indian connection sufficient to invoke the ICWA. He did not.

“In the absence of such a representation, the matter amounts to nothing more than trifling with the courts. [Citation.] The knowledge of any Indian connection is a matter wholly within the appealing parent’s knowledge and disclosure is a matter entirely within the parent’s present control. The ICWA is not a ‘get out of jail free’ card dealt to parents of non-Indian children, allowing them to avoid a termination order by withholding secret knowledge, keeping an extra ace up their sleeves. Parents cannot spring the matter for the first time on appeal without at least showing their hands. . . .

“The burden on an appealing parent to make an affirmative representation of Indian heritage is de minimis. In the absence of such a representation, there can be no prejudice and no miscarriage of justice requiring reversal.” (*Rebecca R.*, *supra*, 143 Cal.App.4th at p. 1431.)

Furthermore, the record in this case affirmatively shows appellant’s daughter does *not* have any Indian heritage. As mother points out, attached to the hearing brief she filed below was a copy of her husband’s petition to adopt the little girl which included a judicial council form he executed stating that an inquiry had been made and that the child has no known Indian ancestry. Appellant has cited no contrary evidence. In these circumstances, “[t]he court had no obligation to make a further or additional inquiry absent any information or suggestion that the child might have Indian heritage.” (*In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 942.)

DISPOSITION

The judgment is affirmed.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

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